

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

Garrin David Smith,	)	C/A No.: 6:07-cv-01793-GRA
a/k/a Garrett Don Smith	)	
	)	
Petitioner,	)	<b>AMENDED ORDER</b>
	)	(Written Opinion)
v.	)	
	)	
United States of America,	)	
	)	
Respondent.	)	
	)	

**[THE ONLY AMENDMENT TO THIS ORDER IS THE PHRASE “WITHOUT PREJUDICE” ON PAGE 1, LINE 10]**

This matter is before the Court on the petitioner’s “Motion to Issue Summons in Civil Action No. 6:07-1793-GRA-WMC,” which was filed on October 22, 2007. On June 28, 2007, Petitioner filed a writ of mandamus, which the magistrate construed as a 28 U.S.C. § 2241 petition. In that petition, Smith claimed that he was not the person named in the federal indictment and that his conviction was a result of misidentification. The magistrate issued a Report and Recommendation on July 13, 2007, recommending that the petition be dismissed without prejudice and instructing the petitioner to file a petition, pursuant to 28 U.S.C. § 2255. On August 13, 2007, this Court adopted the magistrate’s Report and Recommendation and dismissed the § 2241 petition without prejudice. On October 22, 2007, Petitioner filed the instant

motion requesting that the Court issue service of the summons. For the foregoing reasons, the motion is DENIED.

Petitioner brings this claim *pro se*. This Court is required to construe *pro se* pleadings liberally. Such pleadings are held to a less stringent standard than those drafted by attorneys. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). This Court is charged with liberally construing a pleading filed by a *pro se* litigant to allow for the development of a potentially meritorious claim. *Boag v. MacDougall*, 454 U.S. 364, 365 (1982).

Under the Antiterrorism and Effective Death Penalty Act of 1996, an individual is not permitted to "file a second or successive . . . § 2255 motion to vacate sentence without first receiving permission to do so from the appropriate circuit court of appeals." *In Re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997)(citations omitted). Section 2255 provides:

[a] second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain -

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable fact finder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.


28 U.S.C. § 2255; *See also* 28 U.S.C. §§ 2244, 2253.

Upon review of the record, it has come to this Court's attention that the present motion must be construed as a second or successive petition for relief under § 2255. Petitioner has filed three prior petitions for writ of habeas corpus, pursuant to § 2255. *See Smith v. United States of America*, No. 6:04-cr-00466. Petitioner filed his first *habeas corpus* petition on October 13, 2005, it was denied on January 18, 2006, and subsequently affirmed by the Fourth Circuit. He filed a second motion on June 17, 2007, entitled "Defendant's Motion for Damages." This Court construed portions of this motion as a second *habeas corpus* petition under § 2255. These claims were dismissed on July 3, 2007, for failure to certify them with the Court of Appeals. Petitioner filed his third § 2255 motion, on August 3, 2007, and it was dismissed by this Court on August 14, 2007 for lack of authorization to file a second or successive petition.

Therefore, the court must deny Petitioner's Motion to Issue Summons. Petitioner must seek such authorization before filing a second or successive § 2255 motion.

IT IS THEREFORE ORDERED that the petitioner's Motion to Issue Summons be DENIED.

IT IS SO ORDERED.



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G. ROSS ANDERSON, JR.  
UNITED STATES DISTRICT JUDGE

January 14, 2008  
Anderson, South Carolina

**NOTICE OF RIGHT TO APPEAL**

Petitioner has the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified by Rule 4 of the Federal Rules of Appellate Procedure, will waive the right to appeal.